

ESPC

Authorities and Policies

Mandates/Requirements!

- **Agencies SHALL reduce energy consumption by 35% by year 2010 (Relative to 1985 use)
EO 13123, 8 JUN 99**
- **Agencies SHALL reduce energy consumption in Buildings by 20% by year 2000 (Relative to 1985 use) -- Energy Policy Act of 1992 (EPACT), 42 USCA 8253(a)**
- **With respect to buildings, each agency SHALL, TO THE MAXIMUM EXTENT PRACTICAL, implement ECMs with payback periods of less than 10 years -- EPACT, 42 USCA 8253(b)**



Statutory Authorities

- **Federal Agencies may enter into ESPC's for up to 25 years -- 42 USCA 8287 (a)(1)**
- **Contract MUST require annual energy audit and specify terms and conditions of any government payments and performance guarantees -- 42 USCA 8287(a)(2)(A)**
 - **Contractor may be responsible for maintenance and repairs, as determined by the Air Force**
- **Aggregate annual payments MAY NOT exceed amount agency would have paid for utilities without contract . . . and contractor must provide guarantee of savings -- 42 USCA 8287(a)(2)(B)**
 - **Agency may incur debt pursuant to such contract provided guaranteed savings exceed debt service requirements**

Statutory Authorities

- **Funding of cancellation charges NOT REQUIRED IF:**
 - **Contract awarded in competitive manner as provided in the statute; and,**
 - **Funds are available and adequate for payment of first year's costs; and**
 - **If contract cancellation ceiling exceeds \$750 thousand proper notification is given to Congress; and**
 - **Requirements of FAR 17.1 are met -- 42 USCA 8287(a)(2)(D); DEPPM 94-2**
- **Secretary of Energy SHALL by rule establish appropriate procedures and methods to select, monitor and terminate ESPCs**
 - **Procedures are at 10 CFR 436**

Authorities

- **ESPC Procedures -- 10 CFR 436**
 - **Solicitation SHALL request technical and price proposals and text of any third party financing -- 10 CFR 436.33(a)(2)(i); and,**
 - **Solicitation SHALL consider DOE model solicitations and use them to them TO THE MAXIMUM EXTENT POSSIBLE -- 10 CFR 436.33(a)(2)(ii); and,**
 - **Solicitation MAY provide for two step selection process which allows agency to make initial selection based, in part, on proposals containing estimated energy cost and energy unit savings, with contract award contingent on confirmation through a detailed energy survey that guaranteed cost savings are within a certain percentage of estimated amount -- 10 CFR 436.33(a)(2)(iii); and,**
 - **Solicitation MAY provide that if detailed energy survey identifies additional ECMs contract may include such ECMs -- 10 CFR 436.33(a)(2)(iv)**

Authorities

- **ESPC Procedures -- 10 CFR 436 (cont'd)**
 - **Agency selects based on evaluation of tech proposals, applicable financing agreement, statements of contractor qualifications, and any other relevant information -- 10 CFR 436.33(a)(3)**
 - **If project involves large facility agency MAY request technical and price information on a representative sample of buildings and select contractor on that basis -- 10 CFR 436.33(a)(4)(i)**
 - **After selection, but prior to award, agency MAY require selectee to conduct detailed energy audit to confirm savings . . . if Agency and contractor can't agree on savings or technical approach, agency may select another firm -- 10 CFR 436.33(a)(4)**

Authorities

- **Unsolicited Proposals -- 10 CFR 436.33(b)**
 - **Proposals from prequalified firms do not have to meet test of unique and innovative to be considered -- 10 CFR 436(b)(1)**
- **Certified Cost and Pricing data requirements WILL BE waived by heads of procuring agencies -- 10 CFR 436.33(c)(2)**
- **Mandatory terms and conditions -- 10 CFR 436.35**
 - **Contract SHALL contain clauses which:**
 - **Authorize modification, replacement, or changes of equipment at no cost to the agency, with prior approval of the CO -- 10 CFR 436.35(a)(1)**
 - **Provide for disposition of title to systems and equipment -- 10 CFR 436.35(a)(2)**
 - **Require prior CO approval of any financing agreements -- 10 CFR 436.35(a)(3)**

Authorities

- Mandatory terms and conditions (cont'd)
 - Contract SHALL contain clauses which:
 - Provide for an annual energy audit -- 10 CFR 436.35(a)(4)
 - Provide for guarantee of energy cost savings to government and establish payment schedules reflecting such guarantees -- 10 CFR 436.35(a)(5)
- Third Party Financing -- 10 CFR 436.35(b)
 - Contract may permit financing source to perfect security interest in installed energy conservation measures (subject to and subordinate to agency's rights)

Authorities

- Conditions of Payment -- 10 CFR 436.36
 - Payment must be made only from funds available to agency for payment of energy expenses and related operation and maintenance expenses which would have been incurred without the contract -- 10 CFR 436.36(a)
 - Interest is an allowable cost -- 10 CFR 436.36(b)
- After implementation, annual energy audit must be made by contractor or agency as determined in the contract -- 10 CFR 436.37(a)
- Terminating Contracts -- 10 CFR 436.38
 - If terminated for convenience termination liability shall not exceed cancellation ceiling set forth in the contract for the year in which the contract is terminated -- 10 CFR 436.38(b)

DOD Specific Statutory Authorities

- 10 USCA 2865(c) provides that the Secretary of Defense SHALL develop a simplified method of contracting for shared energy savings contracts (AKA energy savings performance contracts)
 - Secretary MAY
 - » Request statements of qualifications from ESPC firms:
 - » Designate from the statements those firms who are presumptively qualified to provide the services;
 - » Select from such firms the most qualified firm to provide the services -- 10 USCA 2865(c)(2)(A)
 - Secretary may also provide for direct negotiation with ESPC contractors who have been selected competitively and approved by any gas or electric utility serving the installation -- 10 USCA 2865(c)(2)(B)